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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/684,205	10/06/2000	Jack H. Hetherington	PIE-10102/29	2529

7590 07/02/2003

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EXAMINER

NGUYEN, JIMMY H

ART UNIT	PAPER NUMBER
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2673

DATE MAILED: 07/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/684,205

Applicant(s)

HETHERINGTON, JACK H.

Examiner

Jimmy H. Nguyen

Art Unit

2673

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-3, 5-12 and 14-26.

Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 2. NOTE: At least the newly amended claim 8 raises new issue that would require a further consideration and/or search. Further, regarding to the drawing objection under 37 CFR 1.84(p)(5), since figure 1B does not include the reference sign of each arrow pointer, this objection is therefore maintained. Regarding to the drawing objection under 37 CFR 1.83(a), the drawings must show the claimed feature, "an entire radial area around the axis of rotation" of claim 25, this objection is therefore maintained. Regarding to the rejection under 35 USC 112, to claims 8 and 9, the newly amended claim 8 overcomes this rejection, however, the scope of the claimed invention is changed, a further consideration and/or search is further required. Regarding to the rejection under 35 USC 112 to claims 25 and 26, since the claimed feature, "entire radial area around the axis of rotation" is not illustrated by drawings or described implicitly in the disclosure, examiner does not understand what applicant means "neither plate consuming an entire radial area around the axis of rotation of claim 25. Furthermore, applicant argument filed "It would be apparent to anyone of skill in the art that neither plates 802 nor 804 occupy an entire radial area around the axis of rotation" is not persuasive, because the claimed feature must be implicitly or inherently taught in the disclosure, but must not be simply recognized by anyone skilled in the art (see MPEP 2163.07(a)). Regarding to the rejection under 35 USC 102(b) to claims 25 and 26, since examiner did not request to add the word, "stationary", to these claims, applicant's argument is not directed to the rejection to these claims in the last office action, this rejection is therefore maintained. Regarding to the rejection under 35 USC 103 to claims 1-3, 5-7, 10-12 and 14-26, applicant's argument filed "there is no motivation to combine these references" is not persuasive, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, since the signal detecting capacitor plate is stationary, the wide voltage fluctuations and variations in the signals to be sensed between the signal detecting capacitor plate and the electronic circuit, due to the movement of the signal detecting capacitor plate, are prevented so that the position of the joystick handle is measured accurately. Furthermore, applicant's argument filed that the combination of Shahoian and Baker does not teach a member laterally shift the dielectric element in a plane substantially parallel to the stationary plates as a function of user position, is not persuasive because Shahoian implicitly teaches a member (112) operative to laterally shift the dielectric member (15) in a plane substantially parallel to the signal detecting capacitor plate (14) and the stationary signal transmitting plate (12) (col. 4, lines 43-52, col. 9, lines 51-54), and Baker teaches a member (107) operative to laterally shift the dielectric member (143) in a plane substantially parallel to the stationary plates (plates 135) as a function of user (fig. 1). Accordingly, the rejection under 35 USC 103 is maintained.



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